

Payments for any period of time that extends beyond 60 Days of the date of Receipt of all Conforming Closeout Documentation. The preceding exception expressly does not include payments regarding pending Issues, a Dispute or claim. For related provisions, see Sections 107.9.5 - Final Acceptance and 108.8 - Final Payment.

108.9.3 Amounts Due the Department Unless expressly provided otherwise in this Contract, in cases where the Department may deduct sums from amounts otherwise due the Contractor and where the sums to be deducted are more than the funds otherwise due the Contractor, the Contractor shall remit all amounts due the Department within 30 Days of receiving an Invoice from the Department. After such 30 Days, the Contractor shall be in Default of this Contract and shall not be entitled to any additional cure period. Statutory interest shall accrue after 60 Days of Receipt of the Invoice.

SECTION 109 - CHANGES

Scope of Section This Section contains general provisions related to changes in quantities, scope, time and payment.

109.1 Changes in Quantities

109.1.1 Changes Permitted The Department may increase or decrease Pay Item quantities from the estimated quantities shown in the Bid Documents, and such increase or decrease shall not be considered Extra Work. Except as expressly provided otherwise in this Contract, the Contractor shall be paid for actual quantities in place and Accepted at the Unit Prices contained in the Contractor's Bid. The Contractor accepts such payment as full and complete compensation.

109.1.2 Substantial Changes to Major Items If quantities of Major Items vary from the estimated quantities contained in the Bid Documents by more than 25%, then the Department may increase or decrease the Unit Price of such item using the extra work process. For related provisions, see Section 109.3 - Extra Work and Section 109.8 - Contract Modification. If an adjustment to the Unit Price is made, it will apply only to that portion of the actual quantity that is less than 75% of the estimated quantity or more than 125% of the estimated quantity.

109.2 Elimination of Items Upon written notification to the Contractor, the

Department may entirely eliminate item(s) of Work for any reason. Upon notification, the Department is entitled to a credit. For Minor Items, the credit shall be the Contractor's Bid price for the eliminated item(s). For Major Items, the amount of the credit shall be the Contractor's Bid price for the eliminated item(s), less (A) direct costs actually incurred by the Contractor after Award, including mobilization, shipping, and restocking expenses that the Contractor cannot recoup on other Projects as reasonably determined by the Department, and (B) 10% for overhead and profit. The Department may withhold said credit from amounts otherwise due the Contractor.

109.3 Extra Work The Department reserves the right to revise the Contract by adding Extra Work. Such revisions neither invalidate the Contract nor release the Surety. The Contractor and/or its Surety agree to perform all such Extra Work. The Department will pay for Extra Work by written Contract Modification in accordance with Section 109.7.1 - General and Section 109.7.2 - Basis of Payment. Any Delay related to Extra Work will be analyzed in accordance with Section 109.5 - Adjustments for Delay. For a related provision, see Section 109.8 - Contract Modification.

109.4 Differing Site Conditions

109.4.1 Definition "Differing Site Conditions" are subsurface or latent physical conditions that, at the time of Bid submittal, were:

- (A) Materially different from conditions indicated in the Bid Documents,
- (B) Not discoverable from a reasonable site investigation prior to Bid,
- (C) Materially different from conditions ordinarily encountered and generally recognized as inherent in Work like that specified by the Contract by Contractors experienced in such Work, and
- (D) Actually unknown to the party seeking relief due to such conditions, which in the case of the Contractor includes its Subcontractors.

109.4.2 Risk of Other Conditions All costs, Work, Delays, or other damages related to or arising from site conditions that are not Differing Site Conditions are the sole risk and responsibility of the Contractor.

109.4.3 Notice and Procedural Requirements If the Contractor discovers what it considers Differing Site Conditions that may cause adjustments to compensation, time, or other Contract requirements, the Contractor shall provide "Notice of Issue for

Consideration" within 48 hours of discovery and before doing any Work relating to such conditions as provided in Section 104.4.5 - Early Negotiation. The Contractor shall then comply with all other requirements of Section 104.4.5 - Early Negotiation, and Section 111 - Resolution of Disputes. The Contractor will not be entitled to any change to compensation, time, or Work requirements without proper notice as specified herein. Failure to provide such notice or to otherwise comply with this Section 109.4 will constitute a waiver of all claims related to such conditions.

If the Department discovers what it considers Differing Site Conditions that may cause adjustments to compensation, time, or other Contract requirements, then the Department will provide the Contractor with notice within 48 hours of discovery. If the Contractor disagrees with the Department's finding of Differing Site Conditions or the related adjustments, then the Contractor shall provide "Notice of Issue for Consideration" within 48 hours and comply with the requirements of Section 104.4.5 - Early Negotiation and Section 111 - Resolution of Disputes.

109.4.4 Investigation / Adjustment Upon notification by the Contractor or upon the Department's own initiative, the Department will investigate the conditions. If the Department determines that Differing Site Conditions exist and that the Differing Site Conditions have caused an increase in the cost or time required for the performance of the Work, then the Contractor is entitled to an Equitable Adjustment for the additional costs of compensable items listed in Section 109.7.3 - Compensable Items that are caused directly by the Differing Site Conditions. If the Department determines that Differing Site Conditions exist and that the Differing Site Conditions have caused a decrease in the cost or time required for the performance of the Work, then the Department is entitled to a credit in the amount of savings to compensable items listed in Section 109.7.3 - Compensable Items, subsections (A) - (E) that are caused directly by the Differing Site Conditions. Delays caused by Differing Site Conditions will be considered in accordance with Section 109.5 - Adjustments for Delay.

109.5 Adjustments for Delay

109.5.1 Definitions - Types of Delays Delays are defined as follows and may be divided into more than one type depending upon cause.

A. Excusable Delay Except as expressly provided otherwise by this Contract, an "Excusable Delay" is a Delay to the Critical Path that is directly and solely caused by

an Uncontrollable Event.

B. Compensable Delay A "Compensable Delay" is a Delay to the Critical Path that is directly and solely caused by: (1) a weather related Uncontrollable Event of such an unusually severe nature that Department receives federal emergency disaster relief funds, (2) an Uncontrollable Event caused by a Utility Company or other third party (not Subcontractors) Working on Project-related Work within the Project Limits if, and only if, the Utility Company or such other third party offers the Department reimbursement for such Delay, or (3) acts by the Department that are in violation of applicable laws or the Contract.

C. Inexcusable Delay "Inexcusable Delays" are all Delays that are not Excusable Delays or Compensable Delays.

For a related provision, see Section 101.2 - Definition of Uncontrollable Event.

109.5.2 Entitlement to Adjustments

A. Types of Adjustments Provided the Contractor meets the requirements of Section 109.5.2(B) below and complies with the notification, documentation, and procedural requirements set forth in the Contract, the Contractor is entitled to certain adjustments to the Contract depending upon the type of Delay.

1. If an Excusable Delay, the Contractor is entitled to an extension of time, but no additional compensation.
2. If a Compensable Delay, the Contractor is entitled to an extension of time and an Equitable Adjustment as set forth in Section 109.7 - Equitable Adjustments to Compensation.
3. If an Inexcusable Delay, the Contractor is entitled to neither an extension of time nor additional compensation.

For related provisions, see Sections 104.2.7 - Damage to Project Caused By Uncontrollable Events and 104.3.10 - Responsibility for the Damage to Work.

B. Requirements for Entitlement To be entitled to any adjustments for an Excusable Delay or a Compensable Delay, the Contractor must demonstrate all of the

following.

1. The Contractor consistently utilized its Schedule of Work to schedule, coordinate, and manage the Work as evidenced by documentation created as the Work progressed including Progress Meeting minutes;
2. The Delay impacted the Critical Path of the Schedule of Work; and
3. There are no concurrent Inexcusable Delays.

C. Concurrent Delays The Contractor is not entitled to a time extension for the period of time when Excusable and Inexcusable Delays are concurrent. The Contractor also is not entitled to either time extension or an Equitable Adjustment for the period of time when Compensable and Inexcusable Delays are concurrent. In the event Compensable and Excusable Delays are concurrent, the Contractor is only entitled to time extension, not an Equitable Adjustment, for the period of time such Delays are concurrent.

109.5.3 Early Completion Date Delay Claims For the purposes of this Section 109.5.3, a "Contractor's Early Completion Date" means a Project Completion date shown on the Contractor's initial Schedule of Work submitted in accordance with Section 107.4.2 - Schedule of Work Required that is earlier than the Contract's specified Completion date. The Department will not be liable for any claims or expenses related to the period of time between the Contractor's Early Completion Date and the Contract's specified Completion date, unless the Contractor demonstrates, by clear and convincing evidence that: (A) all requirements of Section 109.5.2(B) - Requirements for Entitlement are met, and (B) that the Contractor's Early Completion Date was reasonable at the time of Bid in light of the surrounding facts and circumstances, including the Contractor's available resources, and the requirements of the Work.

109.5.4 Notice and Procedural Requirements If the Contractor becomes aware of facts or circumstances that may cause a Delay for which the Contractor may seek adjustments to compensation, time, or other Contract requirements, the Contractor must notify the Resident of such "Issue" within 48 hours and before doing any Work relating to such facts or circumstances as provided in Section 104.4.5 - Early Negotiation. Except as otherwise provided in this Section 109.5, the Contractor shall then comply with all other requirements of Part 111 - "Resolution of Disputes". The Contractor will not be

entitled to any change to compensation, time, or Work requirements without proper and timely notice. Failure to provide such notice constitutes a waiver of all claims related to such conditions.

109.5.5 Documenting the Delay and Request for Adjustments

A. Weekly Reports During Delay To be entitled to any adjustments for Delay, the Contractor must keep records as provided in Section 111.1.6 - Contractor's Obligation to Keep Records. Further, the Contractor must submit weekly written reports containing the following information.

1. Number of Days of impact to the Critical Path.
2. A summary of all operations that have been Delayed, or will be Delayed on the impact of the Contractor's Critical Path.
3. A narrative describing how the cause of the Delay meets the definition of "Excusable Delay" or "Compensable Delay" contained in Section 109.5.1(A) or (B).
4. Itemization of all extra costs being incurred, including (A) how the extra costs relate to the Delay, (B) the identification of all non-salaried Project employees for whom costs are being compiled, and (c) a summary of time charges for Equipment, identified by the manufacturer's number for which costs are being compiled.

B. Request and Report After Completion Within 14 Days of Completion of the phase of Work that the Contractor claims has been Delayed, the Contractor shall submit a written report to the Department that contains the following information.

1. A description of the operations that were Delayed and the documentation and narrative of how the cause for the Delay meets the definition of "Excusable Delay" or "Compensable Delay" contained in Sections 109.5.1(A) or (B), including all reports prepared for the Contractor by consultants, if used;
2. An as-built chart showing when Work operations were actually performed;
3. A graphic depiction of how the operations were Delayed and the impact on

the Critical Path; and

4. An item-by-item request for additional time and compensation for items allowed under Section 109.7.3 - Compensable Items, including measurement and explanation.

The Department may require that all costs shown in the report be certified by an accountant, and that the Contractor provide all other information described in Section 111.2.2 - Detailed Notice of Dispute.

109.5.6 Decision by Program Manager Within 30 Days of receiving all information described in Section 109.5.5(B) - Request and Report After Completion, the Program Manager will Deliver a written decision on the request made to the Contractor. Failure to provide a decision within said 30-day period shall be considered a denial of the Contractor's request, unless the parties mutually agree to an extension of time for such decision.

109.5.7 Additional Consideration By Department If the Contractor wants additional consideration, the Contractor shall Deliver a "Notice of Unresolved Dispute" to the Department's appropriate Bureau Director within 14 Days of Receipt of the Program Manager's decision. Such Notice shall comply with Section 111.3.1 - Notice of Unresolved Dispute. The parties must then comply with all other Dispute resolution provisions of this Contract, beginning with Section 111.3 - Negotiation By Management.

109.6 Value Engineering

109.6.1 Overview - General Requirements A Value Engineering Change Proposal (VECP) is a proposal made by a Contractor after Contract Execution that is intended to produce cost savings without impairing essential characteristics of the Project including function, serviceability, safety, durability, maintainability, and aesthetics, all as determined by the Department.

A VECP shall contain proven features that have been used under similar conditions. A proposal is not a VECP if equivalent options are already provided in the Contract.

A VECP must be approved by the Department. Unless otherwise agreed in writing, the Contractor and the Department will equally share the Net Savings generated by the

VECP as provided in Section 109.6.4(C) - Contract Modification - Amount of Payment

Unless mutually agreed otherwise, the VECP approval process will occur in three steps: (A) Conceptual VECP submission and review, (B) Detailed VECP submission and evaluation, and if approved, (C) Contract Modification including the amount of payment due to the Contractor and credit due to the Department. When the nature and scope of a VECP warrants, the parties may agree to truncate the VECP approval process.

109.6.2 Conceptual VECP

A. Submittal To propose a VECP, the Contractor must submit a written "Conceptual VECP" to the Resident. The Conceptual VECP is not a formal and complete submittal based upon detailed technical analysis, but instead relays a conceptual idea based upon the Contractor's knowledge and experience. The Conceptual VECP should include the following information based upon the Contractor's best knowledge and belief.

1. General Description A narrative that describes the proposed change in concept and includes the basic differences between the existing Contract and the proposed change.
2. Advantages and Disadvantages A listing and brief description of the comparative advantages and disadvantages of the VECP including effects on function, serviceability, safety, durability, maintainability, aesthetics, and any other factors significantly altered by the VECP.
3. Identification of Prior Similar VECPs If the VECP was submitted previously on another Departmental Project, the date, PIN, and the action taken by the Department should be indicated.
4. Known Use or Testing A description of any previous use or testing of the concept(s) included in the VECP that is known to the Contractor, including the tester, the conditions, and the results.
5. Estimate of Net Savings An estimate of the Net Savings as defined in Section 109.6.4(C) - Contract Modification - Amount of Payment below.

6. Estimate of Development Costs A scope of Work and related cost estimate to develop and submit a Detailed VECP and, if desired by the Contractor, a request for the Department to share such costs.

7. Savings and Schedule Impacts An estimate of the time necessary for the Contractor to submit a Detailed VECP. Such estimate must specify the date by which the Department must approve the VECP to obtain the maximum cost reduction, and the latest date by which the Department must approve the VECP for the Contractor to avoid significant impacts on the estimated Net Savings or the Contractor's Schedule of Work. If the Department determines that the time for response is insufficient for review, the Contractor will be so notified Promptly.

B. Conceptual Review and Response The Department will use its best efforts to review a Conforming Conceptual VECP and respond to the Contractor within 14 Days of Receipt. The Department may, in its sole discretion, (1) invite the Contractor to submit a Detailed VECP, (2) reject the Conceptual VECP for reasons that will be described briefly, or (3) request additional information. The Department may also, in its sole discretion, agree to partially reimburse the Contractor for the costs to develop and submit a Detailed VECP. Except under extraordinary circumstances, such reimbursement will range up to 50% of such development costs to a maximum Stated upset amount.

109.6.3 Detailed VECP

A. Submittal If invited by the Department as provided by Section 109.6.2(B) - Conceptual Review and Response, the Contractor may submit a "Detailed VECP" within the time specified by the Department. The Detailed VECP shall contain the following Materials and information that is sufficient in detail to clearly define and explain the proposed change(s).

1. Updated and more complete information regarding items included in the Conceptual VECP including the general description of the VECP, advantages and disadvantages, use or testing elsewhere, a detailed computation of the estimated Net Savings to be generated as defined in Section 109.6.4(C) - Contract Modification - Amount of Payment, actual VECP development costs to date, and estimated savings and schedule impacts including approval date(s)

required. If the Department determines that the time for response is insufficient for review, the Contractor will be notified Promptly.

2. A complete set of Plans and Specifications showing the proposed revisions relative to the original Contract features and requirements. All VECP's that require Engineering design, computations, or analysis shall be prepared under the responsible charge of and sealed by a Professional Engineer licensed in the State of Maine.

B. Evaluation

1. Additional Information The Department may request any additional information that it determines is necessary to properly evaluate the VECP. Where design changes are proposed, such additional information may include results of field investigations and surveys, design computations, Specifications, and field change sheets. The Contractor will Promptly provide any such requested information.

2. Cost Verification The Department may require the Contractor to provide additional information to verify the Contractor's cost analyses.

C. Response The Department will use its best effort to evaluate a Conforming Detailed VECP and provide the Contractor with a written response within 14 Days of Receipt of all of the information it has determined was necessary to properly evaluate the VECP. Such response will include a brief description of the Department's reason(s) for its decision. The Department, in its sole discretion, will either approve the Detailed VECP, approve it with conditions, or rejected it. The Department may base its decision on any reason that is in the best interest of the Department including: (1) unacceptable impact on the function, serviceability, safety, durability, maintainability, or aesthetics of the Project, (2) insufficient testing or use of the VECP concepts elsewhere, (3) insufficient justification of cost savings, (4) unacceptable schedule impacts, (5) insufficient review time, or (6) differing Engineering judgment. The Contractor may Promptly request that the Department reconsider certain portions of the decision. If requested, the Department will Promptly reconsider its decision. After reconsideration, the Department's decision is final and not subject to review or appeal.

D. Termination of VECP Process If the Department rejects the VECP or the Contractor does not desire to proceed with the VECP as approved by the Department, the VECP process will terminate and the Department will reimburse the Contractor for all VECP development costs that the Department agreed to pay as provided in Section 109.6.2(B) - Conceptual Review and Response, if any.

109.6.4 Contract Modification - Amount of Payment If the VECP was approved, or if it was approved with conditions and the Contractor wants to proceed, a Contract Modification will be executed by the parties. In addition to the requirements of Section 109.8 - Contract Modifications, the VECP will set forth the credit due the Department calculated as the difference between the cost of performing the Work, as originally specified, and the amount payable to the Contractor for the revised work. This revised Work payment will only include the following amounts:

- A. The cost of performing the Work as revised by the VECP at agreed upon unit or lump sum prices.
- B. The VECP development costs that the Department agreed to reimburse the Contractor as provided in Section 109.6.2(B) - Conceptual Review and Response, if any.
- C. Fifty percent (50 %) of the Net Savings generated by the VECP (NS) as determined by the Department, calculated as follows.

$$NS = EGS - CUDC - DVEC$$

Where:

NS = Net Savings generated by the VECP

EGS = Estimated Gross Savings is an agreed upon difference between the cost of performing the Work as originally specified in the Contract and the cost of performing the Work as revised by the VECP.

CUDC = Contractor's Unreimbursed Development Costs related to the preparation of the Detailed VECP including costs of the Contractor's design subconsultants and Subcontractors, but excluding all such costs paid by the Department under Section 109.6.4(B) above.

DVEC = Department's VE Costs related to review, approval, and

implementation of the VECP including design costs, field inspection, and the value of any Department provided property.

The Contract Modification shall also set forth any adjustments to Contract Time related to the Work as revised by the VECP, if any.

109.6.5 Subsequent Payment Adjustments Upon Completion of the portion of the Work revised by the VECP, the Department, on its own initiative or upon request by the Contractor, may review the actual net savings realized by the VECP. The Contractor will be afforded an opportunity to review and comment on such a review. If the actual net savings were greater than set forth in the Contract Modification, the increased savings will be shared equally by the parties. If the net savings were less than set forth in the Contract Modification, the reduction in savings will be borne equally by the parties by a reduction of amounts otherwise due the Contractor.

109.6.6 General Conditions Regarding VECP's

- A. VECP's will remain the property of the Contractor, provided that the Department will have the unrestricted right to use any approved VECP, or any VECP in which the Department has reimbursed the Contractor for any portion of the development costs, on other MDOT Projects without notice, cost, or liability to the Contractor.
- B. Only the Contractor may submit VECP's. The Contractor shall review, be responsible for, and submit all proposals initiated by the Contractor's Subcontractors.
- C. The Contractor shall not anticipate Departmental approval of a VECP when Bidding or otherwise before approval of a Detailed VECP. The Contractor is responsible for all Delays caused by the VECP that were not negotiated in the Contract Modification.
- D. If a VECP is rejected, the Contractor shall perform the Work in accordance with the Contract.
- E. Except as otherwise provided in this Section 109.6, the Contractor shall have no claim against the Department for additional compensation or time resulting

from the Delayed review or rejection of a VECP, including but not limited to, development costs, loss of anticipated profits, and increased Material or labor costs.

F. Cost sharing applies only to the Contract for which the VECP was submitted.

G. Because the Department has no obligation to change the terms of the original Contract, all VECP decisions by the Department are final and are not subject to the Dispute resolution provisions provided in this Contract or otherwise available at law.

109.7 Equitable Adjustments to Compensation

109.7.1 General Equitable Adjustment means an adjustment to compensation due to a change in the nature or scope of Work as defined in this Section 109.

This Section 109.7 applies to all changes to the nature or scope of the Work excepting (A) changes in quantities, which are governed by Section 109.1, (B) elimination of items of Work which is governed by Section 109.2, and (C) payment for Value Engineering Change Proposals, which is governed by Section 109.6.

109.7.2 Basis of Payment Equitable Adjustments will be established by mutual Agreement based upon Unit or Lump Sum Prices, which include Labor, Materials, Mark-up, Equipment, Overhead, and Time. If Agreement cannot be reached, the Contractor shall accept payment on a Force Account basis as provided in Section 109.7.5 - Force Account Work below as full and complete compensation for all Work relating to the Equitable Adjustment.

109.7.3 Compensable Items

A. General The Contractor is entitled to the additional, documented, and Actual Costs directly relating to the following items:

1. Labor expenses for non-salaried Workers and salaried foremen ,
2. Costs for Materials,

3. A 15 % markup on the total of Items 1 and 2 of this subsection 109.7.3(A) for home office overhead and profit of the Contractor, its Subcontractors and suppliers, and any lower tier Subcontractors or suppliers. There will be no markups on markups.

4. Costs for Equipment. Equipment costs will be calculated using Blue Book rates as set forth below in Section 109.7.5(C) - Force Account Work, Equipment, unless the Department determines the Contractor's Actual Costs are lower than such rates. If requested by the Department, the Contractor will produce all records that are relevant to the Actual Costs including rental Receipts, acquisition costs, financing documents, lease Agreements, and maintenance and operation cost records.

5. Costs of extended job-site overhead.

6. Time

B. Subcontractor Quoted Extra Work Notwithstanding Section 109.7.3(A) - Compensable Items - General, when accomplishing Extra Work that is priced using a Subcontractor quotation, the Contractor will be allowed a maximum markup of five percent (5%) for profit and overhead.

109.7.4 Non-Compensable Items The Contractor is not entitled to compensation or reimbursement for any other items including the following:

A. Profit or home office overhead in excess of that provided in Section 109.7.3(A)(3) above,

B. Lost profits or lost opportunity costs,

C. Labor inefficiencies,

D. Consequential damages, including but not limited to loss of bonding capacity, loss of Bidding opportunities, and insolvency,

E. Indirect costs or expenses of any nature,

F. Dispute resolution costs of any nature including attorneys fees, claims

consultant fees, expert witness fees, claims preparation expenses, and costs related to DRB proceedings, mediation, arbitration, or litigation, and

G. Interest.

109.7.5 Force Account Work Compensation for Force Account Work will be computed according to this Section 109.7.5.

A. Labor The Contractor will receive the actual hourly wages paid to Workers actually engaged in the changed Work and the foreman in direct charge of the changed Work as determined from certified payrolls, plus 90 percent of the sum thereof for all fringe benefits, payroll taxes, overhead, and profit.

B. Materials For Materials incorporated in the permanent Work, the Contractor will receive the Actual Cost of Materials including freight and Delivery charges (but excluding any sale or use tax) plus a single 15 percent markup. For all Materials not incorporated in the permanent Work, the Contractor will receive the difference of actual value of such Material at the time of its use less the fair salvage value of Material when released, plus 15 percent of said difference. There shall be no markup on markups.

C. Equipment For all authorized usage of power-operated machinery, trucks, or other Equipment, the Contractor will receive the rental rates for the actual time to the nearest ¼ hour that such Equipment is in operation on the Work. Time spent moving Equipment within the Project Limits and any approved idle time may be measured for payment when authorized. Time spent servicing, maintaining, and changing attachments will not be paid for. The rental rates shall include the cost of all fuel oil, lubrication, supplies, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, small tools, and all other Incidentals.

Equipment leased by the Contractor for Force Account Work and actually used on the Project, the Department will pay for the actual Invoice amount, plus 10% for administrative costs. The maximum Hourly Equipment rental rates (R) will be determined using the most current Blue Book rates and the following formula:

$$R = A \times B \times E + C + D$$

Where:

A = Blue Book monthly rate divided by 176

B = Blue Book regional adjustment factor for Maine

C = Blue Book estimated operating costs per hour

D = Operator's hourly payroll rate plus 90 percent

E = Factor from the Rate Adjustment Table for the year the machine was made

When the Contractor's Equipment is ordered to be available for Force Account Work, but is idle for reasons not the fault of the Contractor, standby time will be paid at 70% of the hourly Equipment rental rate excluding all operating costs.

For each piece of Equipment, the Contractor shall provide the following information: the manufacturer's name, Equipment type, year of manufacture, model number, type of fuel used, horsepower rating, attachments required, together with its size or capacity and any further information necessary to ascertain the proper rate. The Contractor shall also provide a photocopy of the appropriate pages from the Blue Book that were used to arrive at the rates and prepare a chart that fully shows all the details of the Equipment costs.

Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications will be used to classify Equipment for the determination of applicable rental rates. A unit of at least the minimum rating recommended by the manufacturer shall power equipment that has no direct power unit.

If the Department specifies Equipment not listed in the above publication, the Department will establish a suitable rate for such Equipment. The Contractor may furnish cost data to assist the Department in the establishment of such rental rate.

D. Superintendence No part of the salary or expense of anyone connected with the Contractor above the grade of foreman or having general supervision of the Work will be included in the labor items as specified above, except when the Contractor's entire on-site Workforce is occupied with Force Account Work, in which case, the salaries of the Superintendent may be included in the labor item specified above when the nature of the Work is such that their services are required, as determined by the Department.

E. Documentation Requirements All Statements shall be accompanied and supported by Receipted Invoices for all Materials used and transportation charges. If

Materials used on the Force Account Work are not specifically purchased for such Work but are taken from the Contractor's stock, then instead of Invoices, the Statements shall contain or be accompanied by an affidavit of the Contractor certifying that such Materials were taken from stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the Actual Cost to the Contractor, excluding storage costs.

No payment will be made for Work performed on a Force Account basis until the Contractor has furnished duplicate itemized Statements of the cost of such Force Account Work detailed to the following:

- 1) Name, classification, date, daily hours, total hours, rate, and amount for each foreman and laborer.
- 2) Designation, dates, daily hours, total hours, rental rate, and amount for each unit of Equipment.
- 3) Quantities of Materials, prices, and amounts.
- 4) Transportation charges on Materials.

109.8 Contract Modification Excepting changes to quantities as provided in Section 109.1.1 - Changes Permitted, all changes to the Contract that affect compensation, time, or quality must be made by written Contract Modification. The Contract Modification will describe the underlying issue that resulted in the Contract Modification and will specify adjustments to compensation, time, or other Work requirements, as applicable. If adjustments to compensation or time are not shown on the face of the Contract Modification, then there are no such adjustments.

All Contract Modifications must be signed by the Project Manager or Resident. By signing a Contract Modification, the Contractor agrees to all the terms thereof and waives any and all claims for additional compensation, time, or other Work requirement adjustments relating to the issue that is the subject of the Contract Modification. All Contract Modifications are to be noted in Progress Meeting minutes.

SECTION 110 - INDEMNIFICATION, BONDING AND INSURANCE